IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

Bail Appl..No. 6090 of 2007()

C.C.NO.68/99 OF Judicial Magistrate of the First Class-III, PALAKKAD

: PETITIONER/ACCUSED NO.3 &4

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1. MADHAVAN, S/O APPUKUTTAN,
AGED 49 YEARS, VADAKKEKARA, EZHAKKAD, MUNDUR,
PALAKKAD DISTRICT.

2. CHANDRAN, S/O.CHAMI,
AGED 39 YEARS, VADAKKEKARA HOUSE,
EZHAKKAD, MUNDUR, PALAKKAD DISTRICT.

BY ADV. SRI.N.RAGHURAJ

RESPONDENTS: COMPLAINANT

STATE OF KERALA-REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6090 of 2007

Dated this the 8th day of October, 2007

ORDER

Application for anticipatory bail. Petitioners are accused 3 and 4. They face allegations under the Kerala Forest Act. The allegation itself is only that the petitioners had trespassed into the forest and cut down bamboo trees resulting in a loss of Rs.150/- to the Government. According to the petitioner, they are absolutely innocent. They had no information whatsoever about the pendency of the case before the learned Magistrate. The petitioners cannot, in these circumstances, appear before the learned Magistrate. The alleged incident had taken place on 8.11.98. Cognizance was taken in 1999. Coercive processes have been issued against the petitioners. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. Their absence earlier was not wilful or deliberate. Considering the nature of the allegations, if really the petitioners were aware of the case pending against them, they would certainly have surrendered before the learned Magistrate. The offence is compoundable also. The petitioners are willing to surrender

before the learned Magistrate and seek regular bail. But they apprehend that their application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. The 2nd accused was arrested earlier. He was obliged to remain in custody for a period of about 10 days. In these circumstances, the petitioners may be granted anticipatory bail, it is prayed.

3. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or

specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

5. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

6. In the peculiar facts and circumstances of this case, there shall be a direction that the warrants of arrest issued by the learned Magistrate against the petitioners shall not be executed till 15.10.07. On or before that date, the petitioners shall appear before the learned Magistrate and seek regular bail.

(R.BASANT, JUDGE)

rtr/-